

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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TIMOTHY PATRICK MURPHY,

Plaintiffs,

v.

Case No. 21-10897

VIAD CORPORATION,

Defendant.

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**OPINION AND ORDER TERMINATING WITHOUT  
PREJUDICE DEFENDANT'S MOTION TO DISMISS**

Plaintiff Timothy Patrick Murphy alleges that during his service in the United States Navy he was exposed to asbestos contained in products Defendant Viad Corporation manufactured and distributed. (ECF No. 1.) He brings claims under negligence, strict liability, intentional and negligent misrepresentation, and fraudulent concealment. (*Id.*, PageID.10-20.)

Plaintiff filed his complaint on April 21, 2021. (*Id.*) On June 9, 2021, Defendant filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2) and (6). (ECF No. 6.) Defendant argued that, based on the allegations contained in the complaint, the court lacks personal jurisdiction over Defendant. In addition, Defendant argued that the complaint failed to state a claim as a matter of law.

On June 29, 2021, Plaintiff filed an amended complaint. (ECF No. 8.) Under Federal Rule of Civil Procedure 15(a), “[a] party may amend its pleading once as a matter of course within . . . 21 days after serving it, or . . . if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21

days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1).

Plaintiff filed the amended complaint within 21 days “after service of [Defendant’s] motion under Rule 12(b),” and the motion to dismiss was the earliest responsive document Defendant filed. Fed. R. Civ. P. 15(a). Thus, Plaintiff could amend the complaint as a matter of right.

Because Plaintiff has filed an amended complaint, the court will terminate as moot the pending motion to dismiss, which attacks the sufficiency of the original complaint. See *Nowak v. ABM Indus. Inc.*, Case No. 21-10774, 2021 WL 1614396, at \*1 (E.D. Mich. Apr. 26, 2021) (Levy, J.) (quotations removed) (“An amended complaint supersedes all prior complaints,” thus “motions directed at the superseded pleading . . . generally are to be denied as moot.”); *Jordan v. City of Detroit*, Case No. 11-10153, 2011 WL 4390003, at \*1 n.1 (E.D. Mich. Sep. 21, 2011) (Cleland, J.) (“[A] complaint that has not yet been filed cannot logically be attacked by a motion to dismiss.”). Defendant will be given fourteen days from the date of this order to respond to the amended complaint, whether through an answer or a motion to dismiss. The court makes no finding as to the merits of the motion to dismiss. Accordingly,

IT IS ORDERED that Defendant’s Motion to Dismiss (ECF No. 6) is TERMINATED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Defendant must respond to Plaintiff’s Amended Complaint (ECF No. 8) by **July 29, 2021**.

s/Robert H. Cleland /  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: July 9, 2021

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 9, 2021, by electronic and/or ordinary mail.

s/Lisa Wagner /  
Case Manager and Deputy Clerk  
(810) 292-6522

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